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10 **UNITED STATES DISTRICT COURT**

11 **SOUTHERN DISTRICT OF CALIFORNIA**

13 NASHONNA COLEMAN, an individual,) CASE NO. 11-cv-1301 MMA (DHB)
14 on behalf of herself and all others) CLASS ACTION
similarly situated,)
15 Plaintiffs,) Hon. Michael M. Anello
v.) Courtroom 5
17 JENNY CRAIG, INC., A Delaware)
corporation, and DOES 1 to 100,) **DECLARATION OF PEGGY J.**
18 Defendants.) **REALI IN SUPPORT OF JOINT**
19) **MOTION FOR DETERMINATION**
Defendants.) **OF DISCOVERY DISPUTE**
20)
21) Honorable David H. Bartick
22) Magistrate Judge
23) Action Filed: 6/13/2011
24) Trial Date: None Set
25)
26)
27)
28)

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1 I, PEGGY J. REALI, declare as follows:

2 1. I am an attorney at law licensed to practice before all of the courts of the
3 State of California, including the United States District Court for the Southern
4 District of California. I am of counsel for The Markham Law Firm, counsel of
5 record for Amy B. Collins and Dean Riggott in this action.

6 2. I submit this Declaration in support of Plaintiffs' Reply Brief in Support
7 of Motion for Class Certification. I make this Declaration based on personal
8 knowledge and if called to testify, I could and would competently testify to the
9 matters contained herein.

10 3. The dispute at issue involves Defendant's responses to the following
11 discovery propounded by Plaintiff:

12 (a) Plaintiff's Special Interrogatories (Set Two) ("Interrogatories"), served
13 by Defendant on April 29, 2013, Nos. 14, 17 and 18 (see **Exhibit 1** attached
14 hereto, true and correct copy of said discovery);

15 (b) Plaintiff's Requests for Production (Set Two), Nos. 18, 20, 22, 28 and 30
16 ("RPD-2") (**Exhibit 2**, true and correct copy of said discovery), served on
17 May 3, 2013; and

18 (c) Requests for Production (Set Three), Nos. 39, 41 ("RPD-3") (**Exhibit 3**,
19 true and correct copy of said discovery), served on May 3, 2013.

20 4. The parties met and conferred in person on May 8 and May 14, 2013 to
21 discuss all the issues presented, and further met and conferred telephonically and by
22 email on May 10, May 14 and May 15, 2013.

23 5. At the deposition of Jenny Craig's 30(b)(6) witness as to policies and
24 procedures, Crystal Danesteh, testified that at least two people need to be in the
25 store at all times. The deposition transcript has not been obtained as of the date of
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1 the filing of this document, but the testimony is derived from notes taken at the
2 deposition by the undersigned.

3 6. Plaintiff needs the contact information of putative class members to
4 determine, at the very least, whether common questions of law or fact exist and if
5 Plaintiff's claims are typical. Speaking with putative class members will allow
6 Plaintiff to show that other class members were unable to take lunches within the
7 time imposed by statute (if at all) and were not paid the required premium; were
8 unable to take rest breaks and not paid the premium; and worked overtime hours
9 without being paid for their work. This evidence is needed, because Plaintiff's
10 testimony of what she has heard from other employees about their experiences being
11 the same as hers, is (*arguendo*) not admissible evidence. Consequently, Plaintiff
12 needs to obtain the evidence directly from the class members. Moreover, the
13 information Plaintiff seeks are records in the exclusive possession of Defendant.

14 7. Plaintiff is willing to enter into a protective order, or in the alternative,
15 agree to an opt-out procedure. A Proposed Stipulation for Protective Order is
16 attached hereto as **Exhibit 4**. Attached hereto as **Exhibit 5** are a true and correct
17 copies proposed Opt-Out Notices recently agreed to by the parties in cases for
18 which The Markham Law Firm is counsel of records for plaintiffs, to wit, *Collins v.*
19 *ITT Educations Services, Inc.*, United States District Court, Southern District of
20 California Case No. 12cv1395-DMS (BGS); and *Ramirez v. Wells Fargo Bank*,
21 N.A., Alameda County Superior Court Case No. RG 10496146.

22 8. The Stipulated Protective Order is a more time-efficient method of
23 protecting class members' privacy rights than the Opt-Out notice method. Should
24 the Court order that the putative class members' contact information be produced
25 only after an opt-out procedure, additional time may be needed by the parties in
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1 light of the May 31, 2013 class certification discovery cut-off set by the Court, to
2 allow adequate time for the procedure.

3 9. Counsel for Defendant, Dale Dixon, stated by email on May 15, 2013
4 that SONIC tie-stamped sales records for Plaintiff Coleman, as well as work
5 schedules and client schedules, will be available and be produced within 10 business
6 days.

7 10. Obtaining the payroll, work schedules, time cards and Ghant records of
8 putative class members will allow Plaintiff's expert to assess the failure of JCI to
9 pay premiums for short lunches.

10 11. The payroll records, eTime, Ghant records and SONIC records are
12 needed by Plaintiff to support her class certification motion, as well as for trial on
13 the merits. The information will show, at the very least, that common issues prevail
14 over individual issues, and the typicality of Plaintiff in this litigation. In addition to
15 anecdotal testimony of Plaintiff and putative class members, Plaintiff will rely on
16 Defendant's own records to show the violations. This will be done by obtaining a
17 sampling of the 395 putative class members' payroll records, such that Plaintiff's
18 consultant can cross reference these records with the work schedules and time
records and other records of putative class members.

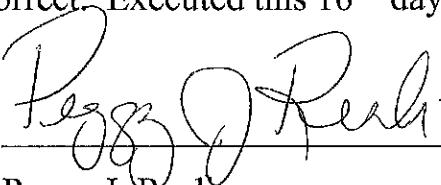
19 12. Plaintiff proposes that a sampling of payroll records be produced, to
20 correspond to and to be compared with the (a) work schedules, (b) time records
21 and (c) other records Plaintiff has requested pertaining to putative class members.
22 The various samples of pertinent records will not disclose the employees'
23 identifying information, but instead can be presented with some other identifying
24 mark, such as employee ID number or other newly assigned number.

25 13. It has been my experience in the past many years of practicing class
26 action litigation that it is common practice that the parties agree to a sampling of the
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1 information requested. This is the compromise plaintiff and defense lawyers have
2 agreed to because of the large numbers of class members involved, since the
3 information relevant to class certification and trial on the merits is in the exclusive
4 possession of the Defendant.

5 14. Plaintiff herein has consulted with her expert, who stated (based on a
6 putative class of 395 class members) that the payroll, time cards and work schedules
7 of 50 class members for about three months (or one annual quarter's worth) will
8 produce an relatively accurate analysis of the entire class, within approximately 2%
9 - 3% accuracy.

10 I declare under penalty of perjury of the State of California and of the United
11 States that the foregoing is true and correct. Executed this 16th day of May, 2013.

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14 Peggy J. Reali

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